

**BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

**In the Matter of the Petition for Early
Termination of Probation By:**

Su-Yong Pak, M.D.

**Physician's and Surgeon's
Certificate No. A 34079**

Respondent.

Case No. 800-2020-065445

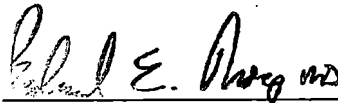
DECISION

The attached Proposed Decision is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on November 12, 2021.

IT IS SO ORDERED October 14, 2021.

MEDICAL BOARD OF CALIFORNIA



**Richard E. Thorp, M.D., Chair
Panel B**

**BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

**In the Matter of the Petition for Early Termination of
Probation of:**

SU-YONG PAK, Petitioner

Agency Case No. 800-2020-065445

OAH No. 2021060472

PROPOSED DECISION

Julie Cabos-Owen, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on August 25, 2021. Su-Yong Pak, M.D. (Petitioner) appeared and was represented by Carlos Ramirez, Attorney at Law. Pursuant to the provisions of Government Code section 11522, Brenda P. Reyes, Deputy Attorney General, represented the Attorney General of the State of California.

Testimony and documents were received in evidence. The record closed and the matter was submitted for decision on August 25, 2021.

FACTUAL FINDINGS

History of Licensure and License Discipline

CALIFORNIA LICENSE

1. On July 2, 1979, the Board issued Physician's and Surgeon's Certificate Number A 34079 (license) to Petitioner. That license is scheduled to expire on August 31, 2022.

2A. In a Decision and Order, effective April 20, 2016 (2016 Probation Order), adopting a Stipulated Settlement and Disciplinary Order, the Board revoked Petitioner's license, stayed the revocation and placed Petitioner's license on probation for two years on specified terms and conditions including completion of an education course and employment of a practice monitor. The 2016 Probation Order was based on Petitioner's repeated negligent acts in failing to identify a hip fracture in an 87-year-old patient.

2B. Petitioner successfully completed the requirements of the 2016 Probation Order, and his license was fully restored, effective April 20, 2018.

3A. In a Decision and Order, effective February 8, 2019 (2019 Probation Order), adopting a Stipulated Settlement and Disciplinary Order, the Board revoked Petitioner's license, stayed the revocation and placed Petitioner's license on probation for 35 months on specified terms and conditions including completion of an education course, a medical recordkeeping course, and a clinical competence assessment program, and prohibition from performing endoscopies and colonoscopies except in a hospital setting.

3B. The 2019 Probation Order arose from allegations in the Accusation, Case No. 8002016019964, charging Petitioner with gross negligence, repeated acts of negligence, and failure to keep adequate and accurate records in conducting endoscopies on three patients.

3C. Petitioner's 2019 probation is scheduled to end January 8, 2022.

OUT-OF-STATE LICENSES

4A. (1) On June 2, 2017, Petitioner was disciplined by the Nevada State Board of Medical Examiners (Nevada Board) based on the 2016 Probation Order in California and his failure to report the California discipline.

(2) On December 9, 2019, Petitioner was again disciplined by the Nevada Board based on the 2019 Probation Order in California.

(3) Petitioner's Nevada license is currently on inactive status.

4B. (1) On April 17, 2018, the State Board of Medicine for the Commonwealth of Pennsylvania (Pennsylvania Board) adopted a Consent Agreement issuing a public reprimand and civil penalty against Petitioner's Pennsylvania medical license. The Pennsylvania Board's discipline was based on the 2016 Probation Order in California and on Petitioner's 2017 Nevada discipline (see Finding 4A(1)).

(2) On October 29, 2019, the Pennsylvania Board adopted a Consent Agreement accepting the permanent, voluntary surrender of Petitioner's license to practice medicine in Pennsylvania. This discipline was based on the 2019 Probation Order in California.

4C. On February 27, 2019, Petitioner tendered his resignation of his right to renew his medical license during the pendency of an investigation by the Massachusetts Board of Registration in Medicine (Massachusetts Board). On March 13, 2019, the Massachusetts Board accepted Petitioner's resignation.

Petition

5. On February 9, 2020, Petitioner signed and subsequently filed his Petition for Penalty Relief seeking termination of his probation (Petition). Thereafter, this matter was set for hearing.

Petitioner's Evidence at Hearing

6A. Regarding the violations giving rise to the 2019 Probation Order, Petitioner testified no patient suffered physical harm. When asked if he now understands he placed patients in danger, he responded, "No," then paused and changed his answer to, "Yes. Yes." Following his violations, Petitioner refrained from performing endoscopies or colonoscopies for the past four years.

6B. In a written statement submitted with his Petition, Petitioner explained in detail his understanding of why he is subject to the 2019 Probation Order. Petitioner wrote:

The Accusation in this case was based on conduct that occurred approximately nine years ago. The investigation in this case was initiated [o]n January 27, 2016[,] after the Board received a complaint from Cal Optima informing it that I voluntarily agreed not to perform endoscopies and colonoscopies on Cal Optima patients.

In the course of the ensuing Board's investigation, three patients who I treated during the period of 2011-2013 were interviewed, and neither the patients nor their family members expressed any dissatisfaction with my treatment. None of these individuals filed a complaint against me. Nonetheless, on April 24, 2018, approximately seven years after all but one of the treatments had been provided, the [Board] filed the underlying administrative accusation in the instant case. The accusation did not allege any patient harm but was based primarily on procedures I employed in performing endoscopies on three patients during the period of 2011- 2013. Specifically, the Board was critical of the absence of telemetry and a registered nurse to administer the medication and monitor the patient's response to the sedatives and analgesics.

[I] entered into a stipulated settlement agreement to address the Board's legitimate concerns. I wanted to put this matter behind me, and to refocus my efforts in satisfying the Board's concerns and becoming a better doctor.

(Exhibit A.)

7A. Petitioner is currently in compliance with all terms and conditions of his Probation Order.

7B. Petitioner completed the required medical recordkeeping course in May 2019.

7C. From July 24 to 26, 2019, Petitioner completed and passed the Physician Competency Assessment Program which is part of the Physician Assessment and Clinical Education (PACE) Program at the University of California, San Diego. PACE found Petitioner's performance satisfactory, but recommended Petitioner undergo a Neuropsychological Fitness for Duty Evaluation, which was conducted by Manuel Saint Martin, M.D., in December 2019. Dr. Martin found Petitioner safe to practice medicine with no additional restrictions or conditions.

8. Petitioner obtained certification from the American Board of Radiology in 1979, and from the American Board of Internal Medicine in 1984. His certifications predated new rules for re-certification every 10 years. Nevertheless, to improve his skills, Petitioner has been studying materials that are typically used to prepare for recertification by the American Board of Internal Medicine.

9A. Although the 2019 Probation Order requires Petitioner to obey all laws and rules governing the practice of medicine, he failed to do so. On December 10, 2020, the California Department of Public Health (CDPH), Radiological Health Branch, inspected Petitioner's medical office and found violations of the Health and Safety Code and the California Code of Regulations. On that date, the CDPH issued a Notice of Violation for the following violations: performing x-ray examinations on patients with an expired permit (expired November 30, 2017); x-ray images which "did not demonstrate collimation to the area of clinical interest" (ex. 9, p. AG-0076); failure to post required regulations; "radiation safety/emergency instructions [which] were not appropriate for digital receptors" (*ibid.*); failure to post required caution sign at entrance to x-ray room; failure to post required notice to employees; and failure to

post required permits. Petitioner had previously received a Notice of Violation on March 30, 2009, for allowing an uncertified individual to perform bone density x-ray procedures, failure to register the bone density x-ray machine, and failure to post the required permits. Petitioner corrected all violations noted in the 2020 Notice of Violation.

9B. At hearing, Petitioner testified his failure to renew required x-ray certification was "not intentional." Petitioner explained the CDPH "usually send[s] renewal notices to my office every year and I comply, but at this time for some reason nobody sent it to me, and I forgot about it." Petitioner later testified x-ray recertification was required every two years, but also acknowledged his permit had expired three years prior to the December 2020 inspection. He admitted it is his responsibility to keep his certification current.

10. Petitioner seeks early termination of his probation because, after completing the required courses and PACE assessment program, he believes he has become a better physician. In a written statement submitted with his Petition, Petitioner sought to assure the Board that early termination of probation is warranted. Petitioner wrote:

As the result of completing the Medical Records Keeping Course and the Clinical Competence Assessment Program, I feel re-energized and believe that I'm now a better doctor than I was prior to the initiation of Board's disciplinary proceedings.

I deeply regret that my actions may have endangered my patients. I take full responsibility for my actions and will ensure that this does not happen again.

I would like to point out that a lot has changed in my practice since I treated the patients who were the basis of the accusation. I attended PACE Record Keeping courses on two occasions, as well as an Ethics course, and I have learned the importance of more detailed patient charting. From the materials I received at the courses and elsewhere, I have developed a set of records that I now use to assure optimal record-keeping on my patients, particularly those undergoing procedures. I will continue to perform all endoscopies and colonoscopies within the standard of care.

(Exhibit A.)

11. Petitioner has the support of colleagues, Robert Ha, M.D., Sami Shoukair, M.D., and Moustafa Alamy, M.D., who submitted letters supporting early termination of probation.

LEGAL CONCLUSIONS

1. Petitioner bore the burden of proving both his rehabilitation and his fitness to practice medicine. (*Housman v. Board of Medical Examiners* (1948) 84 Cal.App.2d 308.) The standard of proof is clear and convincing evidence. (*Hippard v. State Bar* (1989) 49 Cal.3d 1084, 1092; *Feinstein v. State Bar* (1952) 39 Cal.2d 541, 546-547.) Petitioner's burden also required a showing that he is no longer deserving of the

adverse character judgment associated with the discipline imposed against his certificate. (*Tardiff v. State Bar* (1980) 27 Cal.3d 395, 403.) Petitioner has failed to sustain his burden of proof.

2. Business and Professions Code section 2307, subdivision (e), states in pertinent part:

The panel of the division or the administrative law judge hearing the petition may consider all activities of the petitioner since the disciplinary action was taken, the offense for which the petitioner was disciplined, the petitioner's activities during the time the certificate was in good standing, and the petitioner's rehabilitative efforts, general reputation for truth, and professional ability. . . .

3A. For 31 months, Petitioner has complied with all conditions of the 2019 Probation Order. However, mere compliance with probationary terms does not automatically provide the basis for early termination. Petitioner must demonstrate he is rehabilitated and no longer requires the oversight of probation.

3B. In his written statement submitted with the Petition, Petitioner acknowledged his wrongdoing and expressed remorse. However, this acknowledgement is perfunctory, as he continues to downplay his violations, noting that the complaint underlying the 2019 Probation Order was not filed by a patient and that no patient harm occurred. Remorse for one's conduct and the acceptance of responsibility are the cornerstones of rehabilitation. (*In the Matter of Brown* (1993) 2 Cal. State Bar Ct. Rptr. 309.) Fully acknowledging the wrongfulness of past actions is an essential step towards rehabilitation. (See *Seide v. Committee of Bar Examiners* (1989)

49 Cal.3d 933; *In the Matter of Brown, supra*.) Petitioner's failure to fully acknowledge the wrongfulness of his violations precludes a finding of full rehabilitation.

3C. However, mere remorse alone does not demonstrate rehabilitation. A truer indication of rehabilitation is sustained conduct over an extended period of time. (*In re Menna* (1995) 11 Cal.4th 975, 991.) Although Petitioner has avoided further Board discipline in the past 31 months, in December 2020, he was cited by the CDPH for numerous violations, demonstrating his continuing lax attitude toward laws and regulations governing his medical practice. Petitioner's recent violations confirm the need for continued Board oversight to ensure public safety for the remainder of Petitioner's probationary period.

3D. Petitioner's probation is functioning as designed, to afford Petitioner the opportunity to assure the Board of his competency to practice medicine. Petitioner has not provided any basis to discontinue the rehabilitative process of probation.

4. Petitioner has failed to establish, by clear and convincing evidence, that he is entitled to early termination of his agreed-upon 35-month probation.

ORDER

The petition of Su-Yong Pak, M.D., for early termination of probation is denied.

DATE: 09/16/2021

Julie Cabos-Owen

JULIE CABOS-OWEN

Administrative Law Judge

Office of Administrative Hearings